

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IN RE: LITHIUM ION BATTERIES
 ANTITRUST LITIGATION

Case No. 13-md-02420-YGR (DMR)
 MDL No. 2420

**~~[PROPOSED]~~ ORDER RE: PHASE II
 MOTION TO DISMISS BRIEFING AND
 PLAINTIFFS' SECOND AMENDED
 COMPLAINTS**

This Document Relates to:

ALL ACTIONS

Judge: Hon. Yvonne Gonzalez Rogers

Upon consideration of the parties' Joint Status Conference Statement (ECF No. 371) and the positions of the parties at the February 7, 2014 status conference and in their previously-filed letter briefs regarding issues to be determined under Fed. R. Civ. P. 12(b)(6) (*see* ECF Nos. 258 (Defs.' Ltr.), 268 (DPP Ltr.), 269 (IPP Ltr.)), the Court **HEREBY ORDERS** the following (1) briefing for Phase II of the Defendants' motion to dismiss the Indirect Purchaser Plaintiff proposed class action, (2) schedule for Direct Purchaser Plaintiffs ("DPPs") and Indirect Purchaser Plaintiffs ("IPPs") to file their respective Second Consolidated Amended Complaints ("SCACs"), and (3) briefing of motions to dismiss the DPP-SCAC and IPP-SCAC:

1 **1. DEFENDANTS' (PHASE II) MOTION TO DISMISS THE IPP**
2 **CONSOLIDATED AMENDED COMPLAINT**

3 **Issues That May Be Presented.** Defendants may file a motion to dismiss against the
4 allegations set forth in the IPPs' Consolidated Amended Complaint (which has already been
5 dismissed with leave to amend pursuant to the Court's January 21, 2014 Order re Motions to
6 Dismiss ("MTD Order") (ECF No. 361)) on the following issues:

- 7 • Whether the IPPs have standing to bring claims under the laws of the states that
8 apply the *Associated General Contractors* doctrine or analogous antitrust standing
9 principles. *See* ECF No. 258 (Defs.' Ltr.) § I.B.2 & n.2.
- 10 • Whether the *Illinois Brick* doctrine bars IPPs' claims for the states that apply
11 *Illinois Brick* in whole or in part. *See id.* § I.B.3.
- 12 • Whether the IPPs have constitutional standing for claims under Montana and Utah
13 law, and for any subclasses of governmental plaintiffs outside of California, to the
14 extent IPPs continue to assert such claims. *See id.* § I.B.5.
- 15 • Whether certain IPP state law claims were deficiently pled and require dismissal.
16 *See id.* § I.B.6.

17 **Schedule and page limits.** The following schedule and page limits shall apply to the
18 Phase II motion to dismiss briefing:

- 19 • Defendants' joint opening brief shall be due on **March 7, 2014** and shall not
20 exceed thirty (30) pages.
- 21 • IPPs' opposition brief shall be due on **April 7, 2014** and shall not exceed thirty
22 (30) pages.
- 23 • Defendants' joint reply brief shall be due on **April 28, 2014**, and shall not exceed
24 twenty (20) pages.
- 25 • Hearing is set for **May 9, 2014 at 9:30 a.m.**

26 **Defendants' Motion to Strike Certain IPP Class Allegations.** Pursuant to the Court's
27 February 19, 2014 Order, the Court shall not entertain Defendants' proposed motion to strike the
28 IPPs' nationwide class allegations at this time.

1 **2. SCHEDULE AND PROTOCOL FOR PLAINTIFFS' SECOND AMENDED**
 2 **COMPLAINT FILINGS**

3 Both the DPPs and IPPs will file their respective SCACs no later than **March 26, 2014**.

4 Within one day after filing, both the DPPs and IPPs will provide the Court, and serve
 5 Defendants, with a "track changes" or redline version of the SCACs which tracks the
 6 amendments made to the DPP and IPP (first) Consolidated Amended Complaints.

7 **3. SCHEDULE AND PAGE LIMITS FOR MOTIONS TO DISMISS SECOND**
 8 **CONSOLIDATED AMENDED COMPLAINTS**

9 If Defendants do not answer the SCACs in the first instance, Defendants may jointly file
 10 motions to dismiss the respective SCACs, and separate defendant groups of related companies
 11 may file individual motions to dismiss on issues unique to those defendants, *e.g.*, challenging the
 12 sufficiency of the specific allegations against those individual defendants, which do not duplicate
 13 the arguments in the joint motions. The following schedule and page limits shall apply to motion
 14 to dismiss briefing:

- 15 • Defendants' joint motions to dismiss the two SCACs, and any respective
 16 individual motions to dismiss, shall be due on **April 25, 2014**. The page limits set
 17 forth in N.D. Cal. Civil L.R. 7 shall apply to the briefing of Defendants' joint
 18 motions to dismiss the DPP-SCAC and IPP-SCAC. The defendants' respective
 19 individual opening briefs, if any, shall not exceed seven (7) pages. Any
 20 Defendant which does not move to dismiss will answer the SCAC on or before
 21 April 25, 2014.
- 22 • DPPs' and IPP's respective opposition briefs shall be due **May 27, 2014**. The
 23 page limits set forth in N.D. Cal. Civil L.R. 7 shall apply to DPPs' and IPPs'
 24 oppositions to the joint motions to dismiss the DPP-SCAC and IPP-SCAC.
 25 DPPs' oppositions to any defendants' respective individual motions shall not
 26 exceed seven (7) pages.
- 27 • Defendants' joint and individual reply briefs shall be due **June 17, 2014**. The
 28 page limits set forth in N.D. Cal. Civil L.R. 7 shall apply to the reply briefs for the

1 joint motions to dismiss the DPP-SCAC and IPP-SCAC. The defendants'
2 respective individual reply briefs shall not exceed four (4) pages.

- 3 • Whether and when the motions shall be heard will be subject to a subsequent
4 order of the Court.

5
6 **IT IS SO ORDERED.**

7
8 Dated: February 27, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

DATED: February 24, 2014

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10 **E-FILING ATTESTATION**

11 I, Todd A. Seaver, am the ECF User whose ID and password are being used to file this
12 document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the
13 signatories identified above has concurred in this filing.

14 /s/ Todd A. Seaver

15 Todd A. Seaver

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2014, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List.

/s/ Todd A. Seaver

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